

**REMARKS**

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested.

Claims 1-10 remain pending and new Claim 11 is submitted for examination. Further, by this Amendment, editorial changes have been made throughout the claims to correct grammatical errors and other informalities. To the extent that the current amendments are intended to alter the scope of the respective claim and, thereby, circumvent any of the cited references, such amendments will be explained further below. Favorable consideration of the claims is respectfully requested.

**Specification**

The title of the invention is currently amended to overcome the objection thereto as not being descriptive. Thus, Applicants request that this objection be withdrawn.

**35 U.S.C. §103 REJECTIONS**

The following rejections were made under 35 U.S.C. §103(a):

- (a) Claims 1, 3-6, and 8-10 were rejected as being unpatentable over Colle, *et al.* (U.S. Patent Application Publication No. 2004/0158568 A1; hereafter "Colle") in view of McMahan, *et al.*, (U.S. Patent Application No. 2002/0161902; hereafter "McMahan");
- (b) Claim 2 was rejected as being unpatentable over Colle in view of McMahan and further in view of Burnley, *et al.*, (U.S. Patent No. 7,188,170; hereafter "Burnley");

(c) Claim 7 was rejected as being unpatentable over Colle in view of McMahan and further in view of Tanaka (U.S. Patent Application Publication No. 2003/0074387; hereafter "Tanaka").

It is respectfully submitted that rejection (b) is rendered moot by the cancellation of Claim 2. Regardless, Applicants respectfully traverse all of rejections (a) – (c) in view of the current amendments to the claims and the following remarks.

First, Applicants respectfully *disagrees* with the assertion set forth in the rejection that Colle teaches tracking the usage rate of resources.

More particularly, Applicants note that the rejection (see Office Action, page 4) concedes that such resources comprise a CPU or memory, as in the pending claims, and that "Colle does not explicitly teach detecting/allocating resources based on information of an inter-resource distance which is a cost value taken when an execution computer of said computers uses an available resource included in a plurality of resources usable by said computers, the cost being defined as a value representing efficiency for use of said resources," as presently recited, in various scope, in independent Claims 1, 3, 9, and 10.

Bearing in mind the implied concession that College does not expressly disclose tracking usage rate of resources including a CPU or memory, Applicants respectfully submit, as similarly asserted in the previous response of August 17, 2009, that Colle fails to teach or suggest the following, which is recited in amended independent Claim 1, as well as in independent Claims 3, 9, and 10, though in varying scope:

wherein said performance state includes first information indicating at least one of a usage rate of a Central Processing Unit (CPU) included in said computer, an amount of memory being used in said computer, an amount of empty space on a disk storage device included in said computer, an average processing time for the disk storage

device, and an average query processing time for a database application being executed by said computer; determining if said performance state meets a predetermined condition; if said performance state meets said predetermined condition, detecting a job, of said jobs allocated to said computer, that is uncompleted at a timing time when said predetermined condition is met; detecting another computer a resource that is available to execute said detected uncompleted job based on second information concerning resources required for executing said detected uncompleted job, wherein said second information includes an inter-resource distance which is a cost value taken between an execution computer and resources of said plurality of computers, respectively when an the execution computer of said computers uses an available resource included in a plurality of resources usable by said computers, the cost being defined as a value representing efficiency for use of said resources...

Applicants further submit that McMahan does not compensate for the deficiencies of Colle, contrary to the assertion set forth on page 4 of the Office Action.

The rejection contends that McMahan teaches a system/method for allocating computer resources for efficient use of a program, wherein resources include a processor, one or more I/O devices, and memory arrays ([0021], lines 1-4), and that McMahan teaches that resources are allocated/selected based on the shortest distance between two resources so that communication occurs as fast and efficient as possible (Abstract; [0004], [0005], [0021]).

However, McMahan does not teach that costs are determined to respective resources within servers with respect to an execution server. In the claims, the cost is recited as a value representing efficiency for resources. The inter-resource distance is determined using performance data of respective resource from an execution server. That is, McMahan does not disclose an inter-resource distance

table, as claimed or as shown Fig.6 of the present application. As recited, based on the thus determined costs of inter-resource distance, a resource to which an uncompleted job should be allocated is decided (detected).

Furthermore, McMahan ([0021]) discloses that the inter-resource distance can be measured by a physical distance or by time, such as the communication time from one resource to another resource, the time to transfer data from one resource to another resource, etc. However, as presently claimed and as disclosed at page 15, lines 22-24 of the specification of the present application, the inter-resource distance indicates a unit cost taken when the execution server (computer) uses a resource. The using unit cost of the resource is calculated from the operating performance of the resource collected by the agent located in each execution server, as claimed and as disclosed at page 16, lines 23-26. Thus, if the operating performance is high even when the communication time is long, the cost taken between resources is reduced.

Although McMahan describes that more than one resource may be used efficiently, the pending claims recite that the inter-resource distance is updated after dynamically judging addition of a resource or detection of a failure of the resources.

Applicants respectfully submit that the features of the pending claims, as more clearly recited by the current amendments, are not taught or suggested by Colle or McMahan, whether taken individually or in combination with each other in the manner suggested by in the rejection. It is respectfully submitted that the above arguments regarding Colle and McMahan are applicable to all of rejections (a) – (c) since Colle and McMahan are the fundamental basis for all three rejections; and it is further submitted that neither Burnley nor Tanaka compensate for such deficiencies nor are any arguments to that effect advanced in the rejections. Therefore,

Applicants respectfully request that the rejections (a) – (c) be reconsidered and withdrawn.

The remaining references of record have been studied. Applicants submit that they do not supply any of the deficiencies noted above with respect to the references used in the rejection of pending Claims 1, 3-10, and new Claim 11.

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are now in condition for allowance, and therefore early and forthright issuance of a Notice to that effect is earnestly solicited.

To the extent necessary, the applicants petition for an extension of time under 37 CFR 1.136. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, or credit any overpayment of fees, to the deposit account of BRUNDIDGE & STANGER, P.C., Deposit Account No. 50-4888 (referencing Attorney Docket No. 500.43289X00).

Respectfully submitted,

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